A. 47 U.S.C. §271 (c)(2)(A)

No comment.

B. 47 U.S.C. §271(c)(2)(B)(I)-(xiv) – THE COMPETITIVE CHECKLIST

CHECKLIST ITEM 1 - INTERCONNECTION

Verizon has failed to show that it is providing interconnection to requesting carriers in a just, reasonable, and nondiscriminatory manner. Thus, Verizon has failed to meet the requirements of checklist item 1.

i) Non-pricing issues

Sprint in its Comments raised the following points demonstrating a pattern of conduct by Verizon concerning its alleged non-discriminatory compliance with Checklist Item 1: (1) Failure to make collocation arrangements available on just , reasonable, and nondiscriminatory basis; (2) Failure to provide 2-way interconnection trunking; (3) The requirement of that interconnection terms and conditions contain Verizon's Geographically Relevant Interconnection Point ("GRIP") requirements; and (4) Verizon's arbitration/MFN practices. The issue of Verizon's failure to provide 2-way trunking has been resolved via an amended to the Sprint/Verizon interconnection agreement.

Sprint will endeavor not to repeat points made in its February 12, 2001 Comments. At this juncture, Verizon's pattern of conduct regarding collocation and as to GRIP will be addressed below.

Collocation

By Order entered March 22, 2001, the Commission approved an Amended Settlement Agreement at Docket Nos. R-00994697 *et al.* regarding certain collocation

rates, terms and conditions (hereinafter "Collocation Settlement").[17] Sprint is fully committed to implementing the agreed upon provisions in the Collocation Settlement.[18] Exceptions and Reply Exceptions were submitted on the issues not resolved by the Collocation Settlement.[19] Those issues are currently pending before the Commission.

Sprint is primarily interested in physical collocation, not virtual collocation. Sprint has previously been denied collocation in Pennsylvania on five (5) occasions.[20] In its February 12, 2001 Comments, Sprint raised several collocation practices undertaken by Verizon that, Sprint believes, are contrary to the requirements of the FCC's regulations.[21] The issues raised by Sprint include:

> (1) Verizon's practices regarding physical collocation offerings and the failure to make physical collocation space available by removing obsolete and unused equipment pursuant to FCC rules[22] and reassigning such space to increase the amount of space for collocation;[23]

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17 The Collocation Settlement was designed to be applicable for three (3) years for use with the provisioning of collocation arrangements in Pennsylvania, New Jersey, Maryland, Virginia, Delaware, District of Columbia and West Virginia.

18 The Collocation Settlement resolves several issues including the following: (1) cross connect rates; (2) other collocation rate elements (including planning, land and building, cage preparation and power delivery and consumption for traditional physical, SCOPE, cageless and virtual collocation arrangements); and (3) non-price terms and conditions (including central office tours, the exemption renewal process, inspection of CLEC facilities, and removal of obsolete equipment). The parties have also agreed to defer consideration of the provisioning of cageless collocation pending on-going federal appellate litigation and the FCC's resolution of such issues.

19 The unresolved issues currently pending before the Commission at Docket Nos. R-00994697, R-00994697C0001, are as follows: (1) Provisioning intervals; (2) Penalties for Verizon's failure to timely provision collocation; (3) Exemption processes (petition contents and timing); (4) Space reservation; (5) Access to Verizon floor plans/diagrams; (6) Reclamation of space / space termination; (7) Confidentiality provisions; (8) Minimum space increments; (9) Advanced notice of CLEC entry to premises; and (10) Redundant power. *See*, Joint Petition at Docket Nos. R-00994697, R-00994697C0001 at ¶18(j).

20 Tr. at 157 (March 2, 2001) line 9.

21 47 CFR § 51.323. *See*, Sprint Comments (February 12, 2001) at 9, n.22.

22 47 CFR § 51.321(i).

23 While tariff language was included in the Collocation Settlement, Sprint raised this issue in the 271 proceeding due to Verizon's failure to apply those tariff terms and conditions in a non-discriminatory manner.

(2) The lack of detailed information to establish space exhaustion;[24]

(3) Verizon's failure to permit CLECs to order transport until the cage is completed;[25] and

(4) Verizon's redundant power charges (otherwise noted "Or-gated" power).[26]

The collocation-related issues raised in Sprint's 271 Comments are unresolved as of this writing and illustrate a pattern of conduct exhibited by Verizon toward competitors. Each of the above-noted issues will be addressed below based upon record evidence adduced since the filing of Comments on February 12, 2001.

Obsolete and Unused Equipment – During the March 2, 2001 technical conference, Verizon's witness indicated that it was not aware of the specific Sprint allegations as to Verizon's maintenance of obsolete equipment.[27] Verizon's witness later indicated that Verizon does everything to remove obsolete equipment.[28] A few record points are worthy of noting.

It has been Sprint's experience that physical collocation space is not made available in Verizon central offices in areas where obsolete and unused equipment would have previously occupied.[29] It is common knowledge that obsolete and unused equipment will occur in Verizon's normal equipment line-ups. The equipment may be

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24 This issue was addressed in the collocation proceeding relative to the contents of Verizon's exemption filing, the timing of filing the petition, and access to floor plans and diagrams.

25 This issue was not addressed in the collocation proceeding.

26 The redundancy of the rate was specifically reserved in the Collocation Settlement as an issue. *See*, Amended Settlement Agreement at II, D.1. In addition, the Joint Petition accompanying the Collocation Settlement noted that redundant power was an unresolved issue. *See*, Joint Petition at Docket Nos. R-00994697, R-00994697C0001 at ¶18(j).

27 Tr. at 39 (lines 21-25) and 40 (lines 1-4), (March 2, 2001).

28 Tr. at 80 ,lines 8-12 (March 2, 2001).

29 Tr. at 159 (lines 21-25) and169 (lines 6-11) (March 2, 2001).

old and out of use or could have recently become obsolete due to changes in technology. Before the FCC's rules regarding obsolete and unused equipment, incumbent LECs would have typically retired this equipment "in-place" until such time that the space was needed for newer equipment. Since the advent of the FCC's rule regarding the removal of obsolete and unused equipment, incumbent LECs now have an obligation not to retire equipment that is no longer being used "in-place", but rather have an obligation to remove such equipment to make space available for physical collocation.[30] It has been Sprint's experience, in touring at least one central office in Pennsylvania[31] that only virtual collocation is permitted in areas where obsolete and unused equipment would have been retired.[32]

To further complicate matters, as Ms. Thompson testified, Verizon does not explain "how it goes about deciding that a central office is closed for collocation."[33] Verizon does not provide details justifying specifically ***its evaluation*** of what equipment was obsolete and unused.[34] When this failure is coupled with the fact that time elapses between when space was denied by Verizon and when Verizon files its exemption petition,[35] then ability to challenge or contest Verizon's exemption petition is simply not realistic.

Space Exhaustion Information – The collocation proceeding at Docket Nos. R-00994697, R-00994697C0001 addressed as unresolved issues the following: (1) the contents of Verizon's exemption filing; (2) the timing of filing the petition, and (3) access

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30 Sprint Comments at 8-9.
31 Tr. at 159 (March 2, 2001), line 10.
32 Tr. at 159 (lines 21-25) and 169 (lines 6-11), (March 2, 2001).
33 Tr. at 149 (lines 21-25), and 150 (lines 1-19), (March 2, 2001).
34 Sprint Comments, Declaration of Ms. Thompson at ¶¶ 6-7.
35 Tr. at 156 (March 2, 2001), lines 16-21.

to floor plans and diagrams.[36] In Sprint's view, Verizon's practices when seeking a petition for exemption due to space exhaustion have caused unworkable situations.

While Verizon claims that it provides tours of the central offices for which it seeks an exemption, the reality is that a participant is not given access to floor plans in advance of the tour and was not given a copy of the floor plans.[37] Verizon has claimed that its documents are highly proprietary and contain competitively sensitive information.[38] The position is yet another attempt to design processes to hinder workable solutions. Sprint would not object to executing a proprietary agreement in this circumstance.

If the goal of a tour is to access information close in time to when Verizon claims that the central office should be exempt,[39] then Verizon's practices are not conducive to that goal. Verizon's actions and rhetoric illustrate the limited cooperation that Verizon is willing to undertake to implement effective, workable collocation arrangements.

No transport available until after collocation complete – This issue was fully addressed in Sprint's February 12, 2001 Comments.[40] Verizon's practice has been to delay when the collocation arrangement is ready by an additional 120 days by delaying the delivery of transport for that collocation arrangement.[41] The delay causes Sprint to incur monthly recurring charges for collocation space that cannot be used. The delay is

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36 Sprint will abide by the Commission's ultimate disposition of this issue when it addresses the unresolved issues in the collocation proceeding at Docket Nos. R-00994697, R-00994697C0001.

37 Tr. at 181 (March 2, 2001), lines 1-2.

38 Tr. at 181 (March 2, 2001), lines 4-6.

39 Tr. at 178 (March 2, 2001), lines 6-11.

40 Sprint Comments at 10-11 (February 12, 2001).

41 Id.

caused by the fact that CLECs cannot place transport orders up front in the collocation process, as is the case with SBC and Qwest.[42]

During the technical workshops, Verizon posited that its processes were not inconstant with the procedures of SBC and Qwest, that Verizon does provide connecting facility assignments to Sprint prior to when a collocation arrangement is ready, and that Verizon was willing to discuss its processes with Sprint.[43] Since the technical workshops, Sprint has worked cooperatively with Verizon representatives to devise a plan for how Verizon can deliver Sprint's transport in a more timely manner. However, such a plan has not been made subject to a firm commitment. Sprint would additionally point out that Verizon's promises do not equate to performance – and certainly do not ensure performance prior to the Commission's ruling in this docket.

Redundant Power - Verizon justifies its practice of charging for power that a CLEC does not use on the basis that the CLEC has "the ability to draw up the fuse amount."[44] However, Sprint points out that Verizon requires a CLEC to specify the equipment to be placed in its collocation space and the power drain of each piece of equipment on its collocation application. In addition, prior to the placement of any equipment in the collocation arrangement not previously listed on the initial collocation application, a CLEC must submit to Verizon an augment application stating the additional equipment to be placed in the collocation arrangement and the power drain of that equipment. The application process, coupled with publicly available vendor

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42 Sprint Comments at 10-11 (February 12, 2001).
43 Tr. at 37-38 (March 2, 2001), lines 15-20.
44 Tr. at 23 (March 12, 2001), lines 4-5.

documentation provides Verizon with amply record of exactly how much power the CLEC has the ability to draw.

Sprint wishes to make clear that in this 271 proceeding it does not oppose the actual rate itself. However, Sprint does oppose Verizon's practice of charging that rate as redundant amperage based upon backup power feed.[45] The point relevant to 271 is the issue is currently unresolved. There is no guarantee that the redundant power issue will be resolved prior to Verizon filing of its application at the FCC for long-distance authority in Pennsylvania.

Geographically Relevant Interconnection Point ("GRIP")

Since the filing of Comments on February 12, 2001, Sprint was asked by Commission Staff to provide its position regarding GRIP language, as approved by the Commission and as proposed by the arbitrating parties (Focal and Verizon) at Docket No. A-310630F0002. Sprint's response to that In-Hearing Data Request Number 3 is included herewith at Attachment 3.

In addition, since the filing of Comments, Verizon has disclosed that there are no Verizon interconnection agreements in which the CLEC can opt into that contain a provision which allows the CLEC to designate a single interconnection point per LATA.[46]

Sprint fully recognizes that the Commission previously has authorized the use of GRIP-type language in an interconnection agreement. Section 251(c)(2) of the Act and the FCC's rules, however, require that an ILEC must allow interconnection at any

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45 As Cavalier noted in its Comments, the issue is also being litigated in an arbitration between Verizon and Cavalier at Docket No. P-00001852. *See*, Cavalier Comments at 2-3.

46 Verizon In-Hearing Data Request No. 64.

technically feasible point of interconnection.[47] The FCC determined that competing carriers are free to choose the most efficient points of interconnection to lower costs of transport and termination.[48] The FCC stated that Section 251(c)(2) "allows competing carriers to choose the most efficient points at which to exchange traffic with incumbent LECs, thereby lowering the competing carriers' costs of, among other things, transport and termination of traffic."[49] Verizon's interconnection requirements – and any Commission reliance on the same – are inconsistent with the Act and the FCC's requirements.[50]

Many federal district courts have agreed and have rejected as inconsistent with Section 251(c)(2) incumbents' efforts to require competing carriers to establish points of interconnection in each of their local calling areas because such a requirement imposes undue costs and burdens on new entrants.[51]

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47 47 U.S.C. §251(c)(2); 47 C.F.R. § 51.305.

48 *First Report and Order, Implementation of the Local Competition Provision in the Telecommunications Act of 1996*, 11 FCC Rcd. 15499, ¶ 172.

49 Id.

50 *See*, Sprint Comments at 13. Many federal district courts and state commissions have agreed and have rejected as inconsistent with Section 251(c)(2) incumbents' efforts to require competing carriers to establish points of interconnection in each of their local calling areas because such a requirement imposes undue costs and burdens on new entrants. Id. at 15, n. 40.

51 *See, e.g., US West Communications v. AT&T Communications of the Pacific Northwest, Inc., et al*, No. C97-1320R, 1998 U.S. Dist. LEXIS 22361 at *26 (W.D. Wa. July 21, 1998), (US West's contention that the "Act requires a CLEC to have a POI in each local calling area in which that CLEC offers local service" is "wrong"); *US West Communications, Inc., v. Minnesota Public Utilities Commission, et al.*, No. Civ. 97-913 ADM/AJB, slip op. at 33-34 (D. Minn. 1999) (rejecting U S West's argument that section 251(c)(2) requires at least one point of interconnection in each local calling exchange served by US West); *US West Communication, Inc., v. Arizona Corporation Commission*, 46 F.Supp. 2d 1004, 1021 (D.Ariz. 1999) ("The court also rejects U S West's contention that a CLEC is always required to establish a point of interconnection in each local exchange in which it intends to provide service. That could impose a substantial burden upon CLECs, particularly if they employ a different network architecture than U.S. West"); *US West Communications, Inc. v. AT&T Communications of the Pacific Northwest, Inc., et al.*, 31 F. Supp. 2d 839, 852 (D. Or. 1998) ("Although the court

State commission decisions also support Sprint's position. In the California arbitration between AT&T and PacBell, the Commission adopted AT&T's equivalent interconnection proposal setting the default IP at Pacific's tandem and AT&T's switch, and requiring the use of one-way trunks whereby each company is responsible for the construction and maintenance of its own trunks to deliver traffic to the interconnection points.[52] In Kansas, the arbitrator in the TCG/SWBT arbitration similarly allowed TCG to interconnect at SWBT's local and access tandems and allowed TCG to require the use of one-way trunks (citing to the Texas 271 Order).53 The arbitrator's findings and conclusions were accepted and adopted by the Kansas State Corporation Commission as its own.[54]

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agrees with US West that the Act does not define the minimum number of interconnection points, the court also rejects US West's contention that a CLEC is required to establish a point of interconnection in each local exchange in which it intends to provide service. That is not legally required, and the cost might well be prohibitive for prospective customers.") *See also US West Communications, Inc. v. MFS Intelenet, Inc.*, No. C97-222WD, 1998 WL 350588, *3 (W.D. Wa. 1998), *aff'd U S West Communications v. MFS Intelenet, Inc.*, 193 F.3d 1112, 1124 (9th Cir. 1999). Most recently, the U.S. District Court for Colorado issued a similar ruling in *US West Communications, Inc. v. Robert J. Hix, et al.*, No. C97-D-152, _ F.Supp. _ (D.Colo., June 23, 2000) ("Moreover, the Court holds that it is the CLEC's choice, subject to technical feasibility, to determine the most efficient number of interconnection points, and the location of those points.").

52 Public Utilities Commission of the State of California, Opinion, *Application of AT&T Communications of California, Inc. (U 5002 C), et al., for Arbitration of an Interconnection Agreement with Pacific Bell Telephone Company Pursuant to Section 252(b) of the Telecommunications Act of 1996*, Application 00-01-022, page 13 (CA PUC August 7, 2000).

53 Arbitrator's Order No. 5: Decision. *In the Matter of the Petition of TCG Kansas City, Inc. for Compulsory Arbitration of Unresolved Issues with Southwestern Bell Telephone Company Pursuant to Section 252 of the Telecommunications Act of 1996,* Docket No. OO-TCGT-571-ARB, at 4, 10 (Aug. 7, 2000).

54 Order Addressing and Affirming Arbitrator's Decision, *In the Matter of the Petition of TCG Kansas City, Inc. for Compulsory Arbitration of Unresolved Issues with Southwestern Bell Telephone Company Pursuant to Section 252 of the Telecommunications Act of 1996,* Docket No. OO-TCGT-571-ARB, at 2 (Sept. 8, 2000).

The New York Public Service Commission and the Massachusetts D.T.E. expressly rejected Bell Atlantic's GRIP proposal.[55] The Massachusetts D.T.E. noted:

> Because Bell Atlantic's GRIP proposal would require CLECs to establish additional interconnection points at Bell Atlantic's tandem and end offices and does not allocate transport costs in a competitively neutral manner, we reject it. We direct Bell Atlantic to revise its tariff to eliminate the GRIP proposal and to include a provision that reflects that each carrier has an obligation to transport its own customers' calls to the destination end-user on another carrier's network or bear the cost of such transport.[56]

Thus, GRIP requirements are inconsistent with Section 251(c)(2), the FCC's and other rulings that require ILEC's to allow interconnection at any technically feasible point. Accordingly, Verizon cannot be said to be in compliance with Checklist Item 1 due to its pattern of conduct in exacting GRIP requirements in its interconnection arrangements.[57]

The Focal/Verizon arbitration approving a GRIP requirement is also inconsistent with federal requirements. All three GRIP proposals addressed in the Focal/Verizon arbitration contain the unique Verizon "Interconnection Point" ("IP") concept. Briefly,

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55 New York Public Service Commission, Case 99-C-1389, *Petition of Sprint Communications Company L.P. Pursuant to Section 252(b) of the Telecommunications Act of 1996, for Arbitration to Establish an Intercarrier Agreement with Bell Atlantic-New York*, Order Resolving Arbitration Issues, issued and effective January 28, 2000 at 13. Massachusetts D.T.E. 98-57, Investigation by the Department on its own motion as to the proprietary of the rates and charges set forth in the following tariffs: M.D.T.E. Nos. 14 and17, filed with the Department on August 27, 1999, to become effective on September 27, 1999, by New England Telephone Telegraph Company d/b/a Bell Atlantic-Massachusetts, March 24, 2000 at 146.

56 Id.

57 Despite the fact that Verizon's sister affiliates in other jurisdictions may have "worked that [one interconnection point per LATA] out in other states" when there is more than one access tandem, Verizon in this state continues to exact unreasonable GRIP requirements with a competitor seeking to interconnect with Verizon. *See,* Tr. at 317. (March 1, 2001), lines 15-23.

Verizon seeks to take the commonly understood Point of Interconnection ("POI") definition of connecting at any point of technical feasibility and split off the transport billing element via the creation of an IP. Per Verizon, the IP is usually a Verizon end office, but can be a Verizon tandem switch.[58] The consequence of adopting any language incorporating Verizon's IP concept means that Verizon mandates the location of the IP. This measure in turn allows Verizon to deliver its traffic to its end office, or tandem, and then Sprint takes the traffic from there to its POI.

In Sprint's view, the Focal/Verizon arbitration GRIP proposals contain certain redeeming features, however, all three fundamentally embrace this Verizon-imposed network interconnection procedure of an IP that would unfairly increase Sprint's interconnection transport costs and would improperly reduce Verizon's transport costs. As such, the use of an IP remains unduly restrictive and remains inconsistent with federal law and regulations which require that an ILEC must allow interconnection at any technically feasible point of interconnection. Thus, as set forth in Sprint's In-Hearing Data Request No. 3, Attachment 3, regarding the actual GRIP requirement adopted by the Commission in the Focal/Verizon arbitration,[59] Sprint opposes any requirement that would route traffic to the central office or end office.

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58 *See,* Tr. at 317 (March 1, 2001) lines 15-23.

59 The Commission's January 2001 Order at Docket No. A-310639F0002 on this issue required as follows:

> The Parties will establish two-way Tandem Interconnection Trunk groups as an overflow route for End Office direct truck groups and as a primary route for rate centers and/or End Offices where traffic volume does not warrant direct End Office trunk groups (i.e., the 200,000 MOU per month criteria set forth above). The Verizon Tandem office shall be designated as both a Verizon-IP and a Focal-IP; provided, however, that each Party shall be responsible for fifty percent (50%) of the two-way Tandem Interconnection facilities. Focal shall be entitled to use multiple facilities providers at Verizon Tandem offices.

As a compromise measure, however, Sprint could support the use of the tandem for all traffic (without distinction between "primary" or "overflow") as a compromise measure. However, Sprint opposes the assumed 50% cost responsibility included in this language. The use of an assumed 50/50 arrangement for tandem interconnection trunks may not track with actual traffic patterns and the party with lesser amount of traffic will bear a greater financial burden associated with traffic imbalances.

In sum, Verizon cannot be said to be in compliance with Checklist Item 1 due to the inclusion of GRIP requirements in its interconnection arrangements.

ii) Pricing issues

No comment.

iii) Short summary cross-reference to related OSS and metrics issues

No comment.

CHECKLIST ITEM 2 – UNBUNDLED NETWORK ELEMENTS

i) Non-pricing issues

In its Comments, Sprint demonstrated that Verizon failed to meet the requirements of Checklist Item 2 in three ways: (1) Verizon has refused to provide access to information (i.e., information behind the remote terminal) consistent with the *FCC's* UNE Remand Order; (2) UNEs are not presently available to CLECs; and (3) Verizon has failed to set forth its intended compliance with Section 251 relative to its advanced services affiliate.[60] As noted therein, final, lawful UNEs as required by the FCC's UNE Remand Order and this Commission's Global Order will not be available

[60] Sprint Comments at 23-32, (February 12, 2001).

when Verizon files its 271 request with the FCC for Pennsylvania in less than 60 days. Sprint will now address the first and third items.

Remote Terminal Information

Sprint's ability to provide xDSL-based products, like its ION service, depends upon its ability to order unbundled network elements ("UNEs") from Verizon. Because existing xDSL technologies contain limits and distance sensitivities, Sprint's ability to order UNEs greatly depends upon whether and how Sprint can access *en masse* remote terminal information[61] held by Verizon in order to make a sound business decision regarding collocation at the remote terminal and then ultimately to provide these xDSL-based products. Since October of 2000, Sprint has been requesting that Verizon provide such remote terminal information.[62]

There are two issues implicated. First, Verizon's Collocation Remote Terminal Equipment Enclosure Application ("CRTEE") process is confusing and deliberately designed to deter a CLEC applicant from completing the application. This issue has been addressed in Section D.iii below, regarding Verizon's dissemination of information to the industry.

Second, the issue demonstrates the great lengths to which a CLEC must go when dealing with a recalcitrant RBOC such as Verizon. While Sprint has seen some progress by Verizon, it took six months to get some – albeit not a complete – response from Verizon. There has been ***no firm commitment*** made as what will be required of Sprint in order to obtain the information as requested. Moreover, there has been ***no firm commitment*** as to a date certain when the requested remote terminal information

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61 Sprint Comments at 24, n. 62, (February 12, 2001).

62 Sprint Exhibit 4.

would be made available for those remaining central offices.[63] Meanwhile, there is an approximate date certain that Verizon will be making its FCC filing for long distance authority in Pennsylvania.

While the FCC did not require ILECs to construct a database for the benefit of CLECs, its UNE Remand Order plainly mandates non-discriminatory access to all loop qualification information in the possession of the ILEC, including digital loop carrier data. In the UNE Remand Order, the FCC stated "incumbent LECs must provide requesting carrier the same underlying information that the incumbent has in any of its own databases or other internal records."[64] *The* UNE Remand Order requires Verizon to produce this information on an unfiltered basis.[65] It further mandates that Verizon give these data to CLECs not only on a loop-by-loop basis, but also on the basis of the "zip code of the end users in a particular wire center, NXX code, or on any other basis that the incumbent provides information to itself."[66]

These obligations were reemphasized in the FCC's review of SBC's 271 application for Oklahoma and Kansas recently.[67] As reiterated there, any information residing in the ILEC's internal records regarding loop plant, including the presence of digital loop carrier or other remote concentration devices, must be shared with

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63 Sprint Exhibit 4. As noted in this letter from Sprint to Verizon witness John White, Verizon provided some, but not all, of the requested the remote terminal information for the Churchville central office *only*. The commitment to provide such remote terminal information for the remaining Verizon central offices will be subject to being worked on by both Sprint and Verizon as special project basis. There has been no firm commitment as to a date certain when remote terminal information would be made available for those remaining central offices.

64 UNE Remand Order ¶ 427.

65 Id. ¶428 (ILEC "may not filter or digest such information").

66 Id. ¶ 427.

67 *See*, Oklahoma/Kansas 271 Order ¶¶ 121-125.

requesting carriers.[68] And, again, the FCC opined that the ILEC must provide loop qualifying information based, for example, on an individual address or *zip code of the end users in a particular wire center, NXX code or on any other basis*" on which the ILEC itself has access.[69]

Verizon's foot-dragging on this issue is not consistent with its legal obligations, including the requirements of this Checklist Item. The Commission should so find as part and parcel of its overall consultative report which does not recommend 271 approval for Verizon at this time.

Section 251(c), VADI and Verizon's obligations under the Bell-Atlantic/GTE merger.

Verizon's recent actions cast doubt on whether it will comply with the requirement that it – regardless of corporate structure – provide "nondiscriminatory access to network elements in accordance with the requirements of sections 251(c)(3) and 252(d)(1).[70] Verizon in this record has indicated that, relative to the resale of DSL services, it intends to narrowly construe the D.C. Circuit Court of Appeals decision in *Association of Communications Enterprises v. Federal Communications Commission*,

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68 Id. ¶ 121.

69 Id. (emphasis added).

70 47 U.S.C. § 271(c)(2)(B)(ii). While identified as a concern with Checklist Item 2, Verizon's creation and possible continued use of corporate entities to deflect or limit Verizon's obligations under Section 251(c) of the Act impacts all checklist items. Most notably, the issue of DSL resale is of significant concern in light of Verizon's view of applicable law in conjunction with its resale obligations under the Act.. *See*, footnote immediately below.

2001 U.S. App. LEXIS 217 (January 9, 2001) ("*ACE*").[71] At the February 20, 2001 technical conference in this matter, Verizon awaits further "mandate" before its separate subsidiary will be subject to the obligations of Section 251(c).[72] In addition, based upon Verizon's representations during that technical conference, it appears that Verizon will be taking the position that they are exempt from the ACE holding for the timing reasons accorded by the FCC to o SBC in the Kansas/Oklahoma 271 decision.

The D.C. Circuit Court of Appeals decision in *ACE* requires that Verizon cannot avoid its Section 251 obligations through corporate structuring. In relevant part, the Court found that the FCC erroneously presumed that the Ameritech/SBC advanced services affiliate is not a successor or assign so long as it complied with various structural and transactional safeguards. The Court found that the FCC's interpretation of the Act in this manner was unreasonable and in so doing held as follows:

> In short, the Act's structure renders implausible the notion that a wholly owned affiliate, providing telecommunications services with equipment originally owned by its ILEC parent, should be presumed to be exempted from the duties that ILEC parent. [footnote omitted.][73]

Unlike the FCC's ruling on SBC's Kansas/Oklahoma decision, Verizon has already had time to address the *ACE* ruling prior to the Commission issuing its

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71 Tr. at 21 (line 16) through 23 (line 19) (February 16, 2001). VADI, the advanced services affiliate, is a wholesaler arising from an FCC Bell Atlantic/GTE merger condition. VADI does not provide retail DSL service. VADI provides DSL service to ISPs, most notably Verizon Online. Thus, Verizon avoids its resale obligations under the Act via a corporate shell game.

72 Tr. at 20 (February 15, 2001), line 17.

73 2001 U.S. App. LEXIS 217, *17.

consultative report to the FCC. Verizon has chosen to interpret the *ACE* holding as having limited application to its existing corporate operations and structure.[74]

Thus, there are many concerns that remain. In Sprint's Comments submitted on February 12, 2001, Sprint recommended that Verizon should be directed to supplement the instant 271 application so as to demonstrate compliance with Section 251(c) relative to Verizon, VADI and Verizon long distance concerning non-discriminatory access to UNEs.[75] The point of that recommendation was so that Verizon – not the Commission or any other active party – should fully demonstrate how specifically Verizon – including its various corporate affiliates -- intend to provision UNEs or meet its other obligations under the Act (*e.g.*, DSL resale). Having failed in this regard, Verizon's request for a positive 271 recommendation from the Commission should be denied.

To date, Verizon has shown little inclination to comply with the *ACE* holding, and in fact, offers only promises – but no specific plan or date for implementation. A Regional Bell Operating Company, such as Verizon, must provide *actual* evidence of its compliance with the competitive checklist instead of promises of future performance or behavior. The FCC has stated:

> In addition, the [FCC] has found that a BOC's promises of *future* performance to address particular concerns raised by commenters have no probative value in demonstrating its *present* compliance with the requirements of section 271. In order to gain in-region, interLATA entry, a BOC must support its application with actual evidence demonstrating its present compliance with the statutory conditions for entry, instead of prospective evidence that is contingent on future behavior. Thus, we must be able to make a determination based on requirements of section 271.[76]

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74 Tr. at 21 (line 16) through 23 (line 19), (February 16, 2001).

75 Sprint Comments at 32, (February 12, 2001).

76 Memorandum Opinion and Order, *In re: Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act To Provide In-Region, InterLATA Services in the State of New York*, 15 FCC Rcd. 75 (Dec. 22, 1999), *aff'd*,

Verizon has exhibited a pattern of conduct which blatantly offers twisted rationalizations for its non-compliance with existing legal obligations, such as this Commission's Global Order. Reminding Verizon of what it is already obligated to do is insufficient to ensure that Verizon will comply with the Checklist Items if 271 approval is ultimately granted.[77] This is an RBOC with empty promises.

ii) Pricing issues

No comment.

iii) Short summary cross-reference to related OSS and metrics issues

No comment.

CHECKLIST ITEM 3 – POLES, DUCTS, CONDUITS AND RIGHTS OF WAY

Sprint has not raised specific issues regarding Checklist Item 3. However, this statement should not be construed as supportive of Verizon's compliance with this checklist item. *See*, Sprint Stipulation entered into the record on April 5, 2001.

AT&T Corp. v. FCC, 220 F.3d 607 (D.C. Cir. 2000)("New York 271 Order") at ¶36 (citations omitted).

[77] In the Structural Separation proceeding at Docket No. M-00001353, the issued an Opinion and Order on April 11, 2001 in which ordering paragraphs 3 and 8 respectively required as follows:

> That Verizon shall create an advanced services affiliate, structurally separate and apart from the retail division of its business, consistent with its FCC obligation in the Bell Atlantic merger with GTE. The structural separation of this advanced services affiliate shall remain in effect until such time as the Commission removes such obligation.
>
> That notwithstanding the creation of affiliates, Verizon shall adhere to its Section 251 resale/wholesale obligations for DSL/advanced services to CLECs, consistent with the interpretation of those obligations by the FCC and any tribunal of competent jurisdiction.

Other Parties to this proceeding may have raised legitimate issues regarding Verizon's compliance with this checklist item. It is incumbent upon the Commission to determine whether Verizon has exhibited a pattern of conduct regarding this Checklist Item 3.

CHECKLIST ITEM 4 – UNBUNDLED LOCAL LOOPS

Sprint has not raised specific issues regarding Checklist Item 4. However, this statement should not be construed as supportive of Verizon's compliance with this checklist item. *See*, Sprint Stipulation entered into the record on April 5, 2001.

Other Parties to this proceeding may have raised legitimate issues regarding Verizon's compliance with this checklist item. It is incumbent upon the Commission to determine whether Verizon has exhibited a pattern of conduct regarding this Checklist Item 4.

CHECKLIST ITEM 5 – UNBUNDLED LOCAL TRANSPORT

Sprint has not raised specific issues regarding Checklist Item 5. However, this statement should not be construed as supportive of Verizon's compliance with this checklist item. *See*, Sprint Stipulation entered into the record on April 5, 2001.

Other Parties to this proceeding may have raised legitimate issues regarding Verizon's compliance with this checklist item. It is incumbent upon the Commission to determine whether Verizon has exhibited a pattern of conduct regarding this Checklist Item 5.

CHECKLIST ITEM 6 – UNBUNDLED LOCAL SWITCHING

Sprint has not raised specific issues regarding Checklist Item 6. However, this statement should not be construed as supportive of Verizon's compliance with this checklist item. *See*, Sprint Stipulation entered into the record on April 5, 2001.

Other Parties to this proceeding may have raised legitimate issues regarding Verizon's compliance with this checklist item. It is incumbent upon the Commission to determine whether Verizon has exhibited a pattern of conduct regarding this Checklist Item 6.

CHECKLIST ITEM 7 – 911 AND E911 ACCESS/DIRECTORY ASSISTANCE/OPERATOR SERVICES

Sprint has not raised specific issues regarding Checklist Item 7. However, this statement should not be construed as supportive of Verizon's compliance with this checklist item. *See*, Sprint Stipulation entered into the record on April 5, 2001.

Other Parties to this proceeding may have raised legitimate issues regarding Verizon's compliance with this checklist item. It is incumbent upon the Commission to determine whether Verizon has exhibited a pattern of conduct regarding this Checklist Item 7.

CHECKLIST ITEM 8 – WHITE PAGES DIRECTORY LISTINGS

Sprint has not raised specific issues regarding Checklist Item 8. However, this statement should not be construed as supportive of Verizon's compliance with this checklist item. *See*, Sprint Stipulation entered into the record on April 5, 2001.

Other Parties to this proceeding may have raised legitimate issues regarding Verizon's compliance with this checklist item. It is incumbent upon the Commission to

determine whether Verizon has exhibited a pattern of conduct regarding this Checklist Item 8.

CHECKLIST ITEM 9 – NUMBERING ADMINISTRATION

Sprint has not raised specific issues regarding Checklist Item 9. However, this statement should not be construed as supportive of Verizon's compliance with this checklist item. *See*, Sprint Stipulation entered into the record on April 5, 2001.

Other Parties to this proceeding may have raised legitimate issues regarding Verizon's compliance with this checklist item. It is incumbent upon the Commission to determine whether Verizon has exhibited a pattern of conduct regarding this Checklist Item 9.

CHECKLIST ITEM 10 – DATABASES AND ASSOCIATED SIGNALING

Sprint has not raised specific issues regarding Checklist Item 10. However, this statement should not be construed as supportive of Verizon's compliance with this checklist item. *See*, Sprint Stipulation entered into the record on April 5, 2001.

Other Parties to this proceeding may have raised legitimate issues regarding Verizon's compliance with this checklist item. It is incumbent upon the Commission to determine whether Verizon has exhibited a pattern of conduct regarding this Checklist Item 10.

CHECKLIST ITEM 11 – NUMBER PORTABILITY

Sprint has not raised specific issues regarding Checklist Item 11. However, this statement should not be construed as supportive of Verizon's compliance with this checklist item. *See*, Sprint Stipulation entered into the record on April 5, 2001.

Other Parties to this proceeding may have raised legitimate issues regarding Verizon's compliance with this checklist item. It is incumbent upon the Commission to determine whether Verizon has exhibited a pattern of conduct regarding this Checklist Item 11.

CHECKLIST ITEM 12 - LOCAL DIALING PARITY

Sprint has not raised specific issues regarding Checklist Item 12. However, this statement should not be construed as supportive of Verizon's compliance with this checklist item. *See*, Sprint Stipulation entered into the record on April 5, 2001.

Other Parties to this proceeding may have raised legitimate issues regarding Verizon's compliance with this checklist item. It is incumbent upon the Commission to determine whether Verizon has exhibited a pattern of conduct regarding this Checklist Item12.

CHECKLIST ITEM 13 – RECIPROCAL COMPENSATION

1) Non-pricing issues

The issues and concerns raised by Sprint concerning this checklist item represent yet another example of Verizon's obstruction of competition in the local market. Sprint wants to bring innovative services and convenience to Pennsylvania consumers by employing technically feasible, and existing technology.[78] Verizon is impeding that effort.

Specifically, Sprint seeks to offer innovative services which are available through Sprint's operator services platform. A Sprint customer can access Sprint's operator services platform by dialing "00 minus". The call traverses Verizon's multi-jurisdictional

trunk to reach Sprint's operator services platform.[79] When the call terminates within the same calling area, it is Sprint's position that the call is inherently local. In other words, a call made to one's next door neighbor by dialing "00 minus" is just as much a local call as a "non-00 minus" dialed call to that neighbor, which could use Verizon's operator services platform or could be direct dialed.

The position is fully supported by FCC rules and case law. As set forth in Sprint's February 12, 2001 Comments, the FCC supports the position in that the FCC's definition of local traffic does not contain limitations as far as the origination and termination of traffic.[80]

Verizon, however, has historically and by default automatically considered any and all calls directed through an IXC operator services platform as *access* chargeable traffic.[81] Per Verizon, these calls are access chargeable because both the originating and ending points of the call are on the same carrier's network. Because Verizon automatically deems IXC operator services calls as non-local and subject to access charges, Verizon is able to avoid the reciprocal compensation requirements of the Act for local calls made using IXC operator services. Verizon's refusal to distinguish some operator services calls as local means that telephone consumers are denied the benefit of new innovative service offerings.

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78 Tr. at 37 (March 15, 2001), lines 18–19.

79 Sprint does not advocate that any long distance or toll call made via the operator services platform should be subject to reciprocal compensation. It is only local calls associated with operator services for which Sprint seeks to compensate Verizon under reciprocal compensation requirements. Tr. at 37 (March 15, 2001), lines 13-17.

80 Sprint Comments at 33–34, (February 12, 2001).

81 Tr. at 84 (March 15, 2001), line 13.

What is relevant here is Verizon's response when faced with a competitor seeking to avail itself of reciprocal compensation arrangements in order to bring new services to consumers via an operator services platform. As Sprint witness Flurer testified during the March 15, 2001 technical workshop:

> [T]he attitude that Verizon takes towards their network is one that reminds me of my young sons when they're trying to wrangle for the control of the television set in the evening. My oldest boy generally will bunker himself on the couch and grab the remote and hide it underneath the cushion and he's in control. My other sons come in and try to get some viewing of what they want to watch . . . he [the oldest] takes the attitude that he's the oldest; he was there first; he's not going to talk about it anymore; and that's that. He crosses his arms, sets his jaw . . .
>
> [W]e've experienced that Verizon is reluctant to consider local calls, certain local calls as eligible for reciprocal compensation. . . .
>
> By failing to do what is technically feasible, Verizon is avoiding the reciprocal compensation obligation under the Act as long as they keep their arms crossed, as my oldest son in my example does, . . . and refuse to acknowledge that the calls should be eligible for reciprocal comp under the Act.

Tr. at 36 (March 15, 2001), lines 16–37. Verizon's behavior is clearly geared to disabling a competitor from using reciprocal compensation provisions under the Act to make the new products and services available and economically viable.

Verizon's insistence upon pre-Act compensation arrangements would effectively create an exception to checklist item 13 for operator services traffic. That is to say Verizon wants the benefits of 271 approval and wants the ability to continue to use antiquated, pre-Act procedures for treating local operator services calls as access chargeable in order to avoid its reciprocal compensation obligations under the Act. Verizon cannot have it both ways. If this Commission is being asked to consider

Verizon's application for 271 approval, then it should also consider and find that Verizon has not satisfied checklist item 13.

ii) Pricing issues

No comment.

iii) Short summary cross-reference to related OSS and metrics issues

No comment.

CHECKLIST ITEM 14 – RESALE

i) Non-pricing issues

As addressed in Sprint's Initial Comments filed on February 12, 2001, Sprint seeks the ability to resell vertical features on a stand-alone basis consistent with Section 251(c)(4) of the Act. Vertical features are optional services that an end-user may purchase in order to enhance the functionality of the local service.[82] Section 251(c)(4)(B) specifically prohibits "unreasonable or discriminatory conditions or limitations" on resale.[83]

In its Initial Comments, Sprint fully briefed this issue. In addition, in response to In-hearing Data Request Number 1, Sprint set forth additional reasons in support of its position on the vertical features.[84] A copy of Sprint's response to In-hearing Data Request Number 1 is attached hereto and incorporated herewith at Attachment 4.

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82 Sprint Comments at 36, (February 12, 2001). The FCC describes vertical features as providing end users with various services such as custom calling, call waiting, call forwarding, call ID and Centrex. *New York 271 Order*, 15 FCC Rcd. 75, note 1070 (Dec. 22, 1999).

83 47 U.S.C. §251(c)(4)(b).

84 Sprint's response to the In-Hearing Data Request was submitted to the Commission via cover letter on March 15, 2001.